

United States District Court

For the Northern District of California

10 CHRISTOPHER WAGNER,

11 Plaintiff,

No. C 13-04952 WHA

12 v.

13 SPIRE VISION, *et al.*,

14 Defendant.

**15 ORDER RE LIMITED
JURISDICTIONAL DISCOVERY**

16 In this state-law action that was removed on the basis of diversity, defendants claim that
17 Accelerize New Media, Inc., which is a California citizen for diversity purposes, was
18 fraudulently joined.

19 During oral argument, plaintiff Christopher Wagner asserted that Judge Yvonne Gonzales
20 Rogers found no fraudulent joinder when defendants improperly removed this action from state
21 court on January 4, 2013. *Wagner v. Spire Vision, et al.*, No. 13-54. While plaintiff did not raise
22 this argument in any of his moving papers, this Court will take that fact into consideration.

23 A trial court may allow discovery to aid in determining whether it has jurisdiction over
24 an action. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).
25 Therefore, it is **HEREBY ORDERED** that both parties will have 62 days to conduct jurisdictional
26 discovery to determine whether Accelerize is properly joined. Defendants must cooperate with
27 plaintiff's discovery inquiries. Both parties are warned that any proof of bad faith by either party
28 may result in attorney's fees awards.

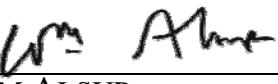
1 After the discovery period has lapsed, plaintiff and defendants shall each file a ten-page
2 brief, along with any supporting documentation, by **FEBRUARY 20, 2014, AT NOON**, on whether
3 Accelerize is a properly-joined defendant. The hearing on plaintiff's motion for partial summary
4 judgment is hereby **VACATED**. Plaintiff may re-notice his motion if this action is ultimately not
5 remanded back to state court.

6

7 **IT IS SO ORDERED.**

8

9 Dated: December 12, 2013.

10 
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE